IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 710 of 2000()

CRA.30/1996 of SESSIONS COURT, KOTTAYAM
CC.301/1988 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

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REVN. PETITIONER:

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1. M.K.BALACHANDRAN,
NEPHEW OF M.K.GOPALAN,
MOOLEPARAMBIL HOUSE,
PUTHUPALLY P.O.,
KOTTAYAM-686 011.

2. M.M.ABRAHAM,
S/O.THOMAS MATHEW,
MAMOOTTIL HOUSE,
PUTHUPALLY P.O.,
KOTTAYAM-686 011.

BY ADV. SRI.THOMAS ANTONY
SRI.K.M.JAMALUDHEEN
SRI.FELIX JOSE

RESPONDENTS:

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1. THE STATE OF KERALA REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. THE FOOD INSPECTOR,
PUTHUPALLY PANCHAYAT,
(CHENGANACHERRY CIRCLE),
PUTHUPALLY P.O.,
KOTTAYAM-686 011.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3883/2000 IN CRL.R.P.NO.710/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

27/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.710 of 2000

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Dated this the 27th day of September, 2007

O R D E R

The revision petitioners are the accused, two in number, the sales man and the proprietor of the shop respectively, in C.C.No.301/1988 in the file of the Chief Judicial Magistrate, Kottayam, with respect to the offences under Sections 2(i)(a), 7(i), 16(1) of the Prevention of Food Adulteration Act and Rule 5 Appendix B.A20 of the P.F.A Rules. The accused stands convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for one month each. It is submitted that the second accused, i.e., the second revision petitioner expired during the pendency of the proceedings herein.

2. The prosecution case is that the Food Inspector, Changanacherry, visited the provision store in door No.I/42 of Puthuppally Panchayat at 2.30 p.m on 12/09/1988 and after disclosing his identity to the first accused-salesman, purchased

750 ml of vinegar out of four litres of vinegar kept in a plastic jar paying its price and, the respective samples were collected in three dry clean glass bottles in compliance with the formalities envisaged vide P.F.A Rules and the samples were sent for chemical analysis were found to be not conforming to the standards prescribed for vinegar.

3. The evidence adduced in the case consisted of the testimony of PWs.1 to 6 and Exts.P1 to P18. The defence examined DW.1.

4. PW.1 is the Food Inspector. PW.2 is the Peon of the Food Inspector, who is the witness to the mahazar. PW.3 is the independent witness to the purchase and sampling, who turned hostile. PW.4 is the Executive Officer of the Panchayat and PW.5 is the Public Analyst. PW.6 is the District Food Inspector.

5. One of the contentions stressed by the counsel for the revision petitioners is that it is evident from the version of DW.1 that he had kept vinegar in the shop of the second accused on his

way to attend a funeral and that the same was not kept for sale, and that the first accused, the salesman was made to give the sample to the Food Inspector on the demand of the Food Inspector. It is pointed out that nothing has been brought out in the cross-examination of DW.1 that he is speaking falsehood. The above contention was rejected by both the courts below. I find that the above contention, on the basis of the evidence of DW.1, cannot be upheld as there is no evidence to the effect that the first accused brought to the notice of the Food Inspector that the same is an article kept by DW.1 and is not meant for sale except suggesting the same in the cross-examination. I find that there is no case that when PWs.1 and 2 were cross-examined that the first accused has told PW.1 that the same is kept by somebody else. In the circumstances, I find that the above contention cannot be upheld.

6. It was also contended that there is nothing to show that it was brewed vinegar that was purchased. The case that it is brewed vinegar was not mentioned in Ext.P4 mahazar or in the complaint filed. PW.1 has also not testified to the above effect.

Hence, it is contended that if the article is synthetic vinegar, the standard prescribed complies. As per Ext.P10 report of the Chemical Analyst, the ascetic acid contents complies with the standard; total solid content is less; ash content is also less. Solid content is not mentioned in the standard for synthetic vinegar, A20.0 I find that the prosecution case would show that it is brewed vinegar from the fact that the evidence is that the vinegar was stored in a plastic container and that there is nothing to show that there was any label etc. which would have been there had it been synthetic vinegar. PW.1 was also not questioned on the above aspect. I find that the above contention also has no merits.

7. The revision petitioner has strongly contended that there is no evidence to show that the sample was stirred and made homogeneous before it was put in the three sample bottles. It is pointed out that Ext.P4 mahazar is prepared in a printed format and the words that 'the purchased commodity has been stirred' forms part of the printed material but that the sample has been stirred is not mentioned in the complaint. PW.1 the Food

Inspector has also not mentioned that the sample was stirred, when he was examined before the court. The appellate court has discarded the above contention on the ground that Ext.P4 mahazar contained the recital that the sample has been stirred. It is also observed that it is the duty of the seller of the shop to sell the food item only after making it homogeneous. As pointed out by the counsel it is the duty of the Food Inspector to make the sample homogeneous as held by this Court in **Muhammedkutty v.Food Inspector [1996 (2) KLT 569].** The duty cannot be shifted to the salesman.

In the circumstances and in view of the fact that the sample has not been made homogeneous, I find that the revision petitioner is entitled for an order of acquittal. Hence, the findings of the courts below convicting the accused is set aside. The first revision petitioner is acquitted. The criminal revision petition is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.710 of 2000

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O R D E R

27th September, 2007